SUPREME COURT, U.S.
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No. 96-1079 OF THE CLERK

In The
Supreme Court of the United States
October Term, 1996

JOHANNA TREVINO, a minor,
Petitioner and Cross-Respondent,

vs.

DARYL GATES, TOM BRADLEY, HERBERT BOECKMANN, JERRY BROOKS, JOSEPH CALLIAN, MICHAEL SIRK, RICHARD SPELMAN, GARY STRICKLAND, JAMES TIPPINGS, RICHARD ZIERENBERG, MANUEL AVILA, CHARLES BENNETT, BRIAN DAVIS, JOHN FRUGE, JOSEPH FREIA, EDWARD GUIZA, PETER SANCHEZ, REGINALD WEAVER, JAMES TOMA, C.S. WINSTON, PHILLIP WIXON, GARY ZERBEY, JOEL WACHS, JOY PICUS, JOHN FERRARO, ZEV YAROSLAVSKY, RUTH GALANTER, ERNANI BERNARDI, NATE HOLDEN, MARVIN BRAUDE, HAL BERNSON, MICHAEL WOO, JOAN FLORES, all in both their individual and official capacities, and CITY OF LOS ANGELES,
Respondents and Cross-Petitioners.

CROSS-PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

When calculating attorney's fees to be awarded to prevailing plaintiffs pursuant to 42 U.S.C. § 1988, should district courts be precluded from considering evidence of the hourly rates paid to private attorneys employed by public entities to litigate and defend civil rights cases?

PARTIES IN THE ACTION

Johanna Trevino, a minor, by and through her next friend, her grandmother, Filadelfia Cruz, was the plaintiff-appellant in the court below.

Daryl Gates, Tom Bradley, Herbert Boeckmann, Jerry Brooks, Joseph Callian, Michael Sirk, Richard Spelman, Gary Strickland, James Tippings, Richard Zierenberg, Manual Avila, Charles Bennett, Brian Davis, John Fruge, Joseph Freia, Edward Guiza, Peter Sanchez, Reginald Weaver, James Toma, C.S. Winston, Philip Wixon, Gary Zerbey, Joel Wachs, Joy Picus, John Ferraro, Zev Yaroslavsky, Ruth Galanter, Ernani Bernardi, Nate Holden, Marvin Braude, Hal Bernson, Michael Woo, Joan Flores and the City of Los Angeles were defendants-appellees in the court below.

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CROSS-PETITION FOR WRIT OF CERTIORARI

Daryl Gates, et al., cross-petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 99 F.3d 911 (9th Cir. 1996) and is attached as an Appendix to the Petition for Writ of Certiorari filed by the petitioner Johanna Trevino.

JURISDICTION

Cross-Petitioners were appellees in this case in the United States Court of Appeals for the Ninth Circuit. The opinion and judgment was entered on November 1, 1996. No petition for rehearing was filed in the Court of Appeals. This cross-petition is timely filed within 90 days of the date judgment was entered. ***28 U.S.C. § 2101(c), Rule 13-4, Rules of the U.S. Supreme Court***. The jurisdiction of this Court is invoked pursuant to ***28 U.S.C. § 1254***.

STATUTES INVOLVED

42 U.S.C. § 1988(b)

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985 and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C. § 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C.A. § 2000bb et seq.], title VI of the Civil Rights Act of 1964 {42 U.S.C.A. § 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

STATEMENT OF THE CASE

Petitioner and Cross-Respondent Johanna Trevino was two and one-half years old at the time this action was commenced and brought through "her next friend, her grandmother," Filadelfia Cruz. In a complaint filed April 1, 1992, petitioner alleged that, seven days before she was born, her father was one of four men who participated in a "commercial burglary" at a McDonald's restaurant in Sunland, California, and that he was shot and killed by Los Angeles Police Officers. Petitioner alleged that the actions of the defendants under color of state law deprived her of rights secured by the United States Constitution and were actionable pursuant to ***42 U.S.C. § 1983***. Jurisdiction of the district

court was invoked pursuant to ***28 U.S.C. §§ 1331*** and ***1343***.

Petitioner's grandmother had previously sued the City of Los Angeles on account of the death of her son (petitioner's father) and that litigation was concluded adversely to the City in ***Gomez v. Gates***, 804 F.Supp. 69 (C.D. Cal. 1992). Although no compensatory damages were awarded in that action, nominal damages in the amount of $1.00 and punitive damages against the Chief of Police and eight officers, totaling approximately $44,000, were assessed. The City and more than thirty municipal defendants, including members of the City Council, had been dismissed or dropped from the case either prior to or during trial.

This action was filed a few days after the verdict in ***Gomez***. Counsel for petitioner and cross-respondent, who had previously represented the plaintiffs in ***Gomez***, addressed a letter to members of the Los Angeles City Council informing them that ten Council members had previously been named in the ***Gomez*** case because they had voted to indemnify the Chief of Police for punitive damages assessed in yet another civil rights case [***Larez v. City of Los Angeles***, 946 F.2d 630 (9th Cir. 1991)]. Counsel for petitioner and cross-respondent advised council members to "think twice" before making the same mistake, and promised to dismiss council members voting *not* to indemnify Chief Gates in ***Gomez*** from the newly filed ***Trevino*** action (the case at bar). Notwithstanding this "advice," a majority of members of the City Council voted to

satisfy the ***Gomez*** judgment, including punitive damages assessed against Chief Gates, after making the findings required by ***California Government Code § 825(b)***. This lawsuit was thereafter served on defendants and depositions of City Council members noticed.

The complaint in this matter alleged that members of the City Council, who were named in the complaint in both their individual and official capacities, had violated petitioner's constitutional rights by ratifying, acquiescing in, or affirming the misconduct which enabled the death of petitioner's father. Petitioner asserted that the City's policy makers had knowingly, or with gross negligence or deliberate indifference, created, maintained, ratified or failed to correct an official policy permitting the occurrence of the types of wrongs complained of.

On August 10, 1992, in a published order and opinion [***Trevino v. Gates***, 798 F.Supp. 621 (C.D. Cal. 1992)], the court ruled that absolute legislative immunity did not protect the council members from suit. Respondents and Cross-Petitioners appealed this decision to the United States Court of Appeals for the Ninth Circuit, and the opinion was affirmed. (***Trevino v. Gates***, 23 F.3d 1480 (9th Cir. 1994). Cross-Petitioner's petition for writ of certiorari to this court was denied. (***Wachs v. Trevino***, 115 S.Ct. 32 (1994).)

In further proceedings in the trial court, the district court held that petitioner and cross-respondent was collaterally

estopped from relitigating punitive damages and was bound by the verdict in ***Gomez***. The defendant officers stipulated to a punitive damages award of $9,109 which was the highest amount awarded to any plaintiff in ***Gomez***.

Summary judgment was entered for the City and Councilmembers on the ground of qualified immunity, and the only issue remaining to be litigated was the compensatory damages due petitioner and cross-respondent from the defendant police officers. After a jury trial, petitioner and cross-respondent received a nominal damages award of $1 plus the $9,109 previously stipulated in punitive damages from the officers. Petitioner and cross-respondent moved for attorney's fees in the amount of $495,885 under ***42 U.S.C. § 1988*** and the district court awarded $25,000.

On appeal to the Ninth Circuit, the judgment was affirmed with regard to the entry of summary judgment for the Councilmembers and the City, and with regard to the trial court's rulings. This decision is currently the subject of the Petition for Writ of Certiorari in this Court. However, the district court's award of attorney's fees was reversed. The Ninth Circuit concluded that it was error for the district court to have relied on evidence of the hourly rate paid by the City to private lawyers retained to represent the City and municipal employees in civil rights lawsuits. While the court held that the district court had not abused its discretion in reducing the rate requested by Trevino's counsel because the issues were

not complex, it nevertheless held that it should not have relied on hourly rates paid to private defense counsel when calculating a reasonable hourly rate to be paid plaintiff's counsel. (Petition for Writ of Certiorari, Appendix at p.27a.) The court found that lawyers retained by the City to defend civil rights lawsuits are not "in the same legal market" as private plaintiff's lawyers who litigate civil rights cases and are not in fact acting as "private" counsel. (Petition for Writ of Certiorari, Appendix, pp.27a-28a.)

ARGUMENT

I.

REASONS FOR GRANTING THE WRIT OF CERTIORARI.

A petition for writ of certiorari will be granted "only for compelling reasons." (***Rule 10, Rules of the U.S. Supreme Court***.) A grant of certiorari is justified in the instant case because the Ninth Circuit opinion is in conflict with an opinion from the First Circuit, and also because the Ninth Circuit has decided an important question of federal law which has not been, but which should be, settled by this Court.

The Circuits of the federal courts are in fact split on the proper weight to be accorded evidence of the hourly rate paid to private defense counsel retained by public entities to defend civil rights litigation. While some circuits agree with the Ninth

Circuit that such evidence is irrelevant to calculating a reasonable hourly rate for plaintiff's lawyers, at least one circuit in ***Andrade v. Jamestown Housing Authority***, 82 F.3d 1179 (1st Cir. 1996), has held that there is no reason, all other factors being equal, why the hourly rate paid to plaintiff's lawyers should exceed that paid to defense lawyers. (***Id.*** at 82 F.3d 1190.) Indeed, it is illogical to require a district court calculating a reasonable hourly rate to ignore the rates paid by what is arguably the largest single consumer of hourly legal services in civil rights litigation: the governmental entity.

The existence of the conflict concerning the admissibility of defense attorney hourly rates illuminates the need to grant this cross-petition for certiorari in order to settle an important question of federal law. This Court's directive to the lower courts to calculate a reasonable hourly rate based on the "prevailing market rates in the relevant community" [***Blum v. Stenson***, 465 U.S. 886, 895 n.11, 79 L.Ed.2d 891, 104 S.Ct. 1541 (1984)], has been variously interpreted throughout the federal circuits without much consistency or uniformity. A variety of interpretations co-exist and have contributed to growing confusion and frustration for district courts asked to calculate a reasonable hourly rate.

While three general groups of cases interpreting the concept of "prevailing market rate" can be isolated, the definitions being developed at the district court and circuit level are neither complementary nor consistently applied and

demonstrate the need for some clarification of ***Blum*** or additional guidance in this area. The three groups of cases define a prevailing market rate by focusing on:

1. the hourly rate charged by the attorney seeking the fee to clients paying for hourly legal services; or

2. the hourly rate awarded to the attorney seeking the fee by other judges in civil rights cases, or the hourly rate awarded to other plaintiff's civil rights lawyers; or

3. the hourly rate charged by other similarly situated practicing attorneys for similar services.

Depending on which definition is adopted, and how the relevant fee market is defined, the evidence which a district court may consider when fixing an hourly rate varies widely. Specifically, if the relevant community is narrowly defined to include only attorneys representing plaintiffs in civil rights cases, then the hourly fees paid by governmental entities to private attorneys defending such lawsuits can be or is excluded. If, on the other hand, the market is more broadly defined to include all lawyers of similar skill performing similar services, then there is no reason to exclude evidence of hourly rates charged by defense lawyers. Such evidence may not be dispositive, or may have to be adjusted to account for factors such as discounting, but it is surely not irrelevant.

This, then, is the question presented by this cross-petition: for purposes of fixing a reasonable hourly rate and awarding attorney's fees, is the prevailing market rate to be defined

narrowly to exclude hourly fees paid to private lawyers representing governmental defendants, or is it to be defined more broadly to allow for reference to these rates when such evidence is relevant and helpful to the calculation? Cross-petitioner urges this Court to clarify its holding in ***Blum*** to define the relevant market broadly to include all attorneys, including defense attorneys, performing similar services, and to permit district courts to consider fees paid to defense lawyers when such evidence is helpful in fixing a reasonable hourly rate.

II.

A NARROW DEFINITION OF THE RELEVANT FEE MARKET DOES NOT ASSIST A TRIAL COURT IN FIXING A REASONABLE HOURLY RATE.

When an attorney's fee is awarded under the numerous fee-shifting statutes, it is to be calculated by multiplying the number of hours reasonably expended times a "reasonable hourly rate." (***Hensley v. Eckerhart***, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983); ***Blum v. Stenson, supra*** at 465 U.S. 888, 104 S.Ct. 1544.) The critical inquiry in determining reasonableness is generally recognized as the "appropriate hourly rate." (***Blum v. Stenson, supra*** at 465 U.S. 895 n.11, 104 S.Ct. 1547 n.11.) The prevailing attorney has the burden of producing evidence that proves the requested rate is in line

with rates prevailing in the community for similar services performed by lawyers of reasonably comparable skill, experience and reputation. (***Ibid.***)

A number of circuits have considered or adopted narrow definitions of the relevant market and thus limit the evidence admissible to assist the trial court in fixing a reasonable hourly rate. An initial trend towards focusing on the rate actually charged by the lawyer seeking the fee to clients paying hourly rates has not been widely adopted but such evidence is still considered relevant and admissible. [See, e.g. ***Andrade v. Jamestown Housing Authority, supra*** at 82 F.3d 1190 ("While an attorney may inform the court's analysis by providing evidence of her customary billing rate...,the court is not obligated to adopt that rate."), ***Public Interest Research Group of New Jersey, Inc. v. Windall***, 51 F.3d 1179, 1185 (3rd Cir. 1995) ("The starting point in determining a reasonable hourly rate is the attorneys' usual billing rate, but this is not dispositive."), ***Rum Creek Coal Sales, Inc. v. Caperton***, 31 F.3d 169, 175 (4th Cir. 1994) ("While evidence of fees paid to attorneys of comparable skill in similar circumstances is relevant, so too is the rate actually charged by the petitioning attorneys when it is shown that they have collected those rates in the past from the client."), ***Hadix v. Johnson***, 65 F.3d 532, 536 (6th Cir. 1995) ("In the case of private attorneys...where an attorney requesting fees has well-defined billing rates, those rates can be used to help calculate

a reasonable rate for a fee award."), ***People Who Care v. Rockford Board of Education***, 90 F.3d 1307 (7th Cir. 1996) ("The attorney's actual billing rate for comparable work is 'presumptively appropriate' to use as the market rate.").]

In other circuits, however, evidence of the rates paid by fee-paying clients to the lawyer seeking the fee is not afforded any particular evidentiary weight and the courts rely instead on "rates customarily paid in the community for similar services." (***Blum v. Stenson, supra*** at 465 U.S. 895 n.11, 104 S.Ct. 1547 n.11.) [See, e.g. ***Schwarz v. Secretary of Health & Human Services***, 73 F.3d 895, 908 (9th Cir. 1995) ("This determination [reasonable hourly rate] 'is not made by reference to rates actually charged the prevailing party.' Id. Rather, the court 'should be guided by the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience and reputation.' (Citation omitted.)"), ***Beard v. Teska,*** 31 F.3d 942, 956 (10th Cir. 1994) ("...the relevant market value is not the price that the particular lawyer chosen may be paid by willing purchasers of his or her services, but rather the price that is customarily paid in the community for services like those involved in the case at hand.").]

A recent trend, however, appears to be reviving (or expanding, depending upon one's viewpoint) the narrow approach to defining the relevant market for purposes of fixing attorney's fees. Many courts have considered evidence

of the hourly rate awarded to the petitioning attorney in other civil rights cases or awarded to other plaintiff's civil rights lawyers in other cases as persuasive on the question of prevailing market rate. In ***Washington v. Philadelphia***, 89 F.3d 1031 (3rd Cir. 1996), for example, the attorney seeking the fee submitted affidavits from other lawyers practicing in Philadelphia in employment discrimination cases, the same type of case prosecuted by the fee-seeking attorney. (***Id.*** at 89 F.3d 1035.) Such evidence was considered "prima facie" evidence of the market rate prevailing in the relevant community. (***Id.*** at 90 F.3d 1036.)

In ***Buffington v. Baltimore***, 913 F.2d 113 (4th Cir. 1990), the court noted that rates charged by general civil litigators should not be "mechanically accepted" by the district court as evidence of the prevailing market rate without corroborating evidence that these rates corresponded to rates charged for *civil rights* litigation. (***Id.*** at 913 F.2d 130.) The court noted that the hourly rates prevailing in the relevant community were best proved by reference to the rate received by other counsel with similar qualifications in comparable cases, recent awards by courts in similar cases, and specific evidence of awards received by counsel seeking the fee. (***Ibid.***)

Additionally, in ***Islamic Center of Mississippi, Inc. v. City of Starkville***, 876 F.2d 465 (5th Cir. 1989), the attorney seeking the fee in a civil rights case submitted affidavits from

other lawyers practicing in the same region stating the "customary charge" for complex civil rights litigation in federal court. (*Id.* at 876 F.2d 467.) This evidence was apparently accepted as proof of the prevailing market rates. (*Id.* at 876 F.2d 469-470.)

In the case at bar, the Ninth Circuit appears to have adopted this reasoning, or at least so narrowly defined the relevant market for purposes of fixing an hourly rate that only evidence of the hourly rates paid to other plaintiff's civil rights lawyers may be admissible. The court notes that the "proper reference point" for determining an appropriate fee award is the "rates charged by private attorneys in the same legal market" as the attorney seeking the fee. (Petition for Writ of Certiorari, Appendix at 27a.) If, as the court states, "private attorneys hired by a government entity to defend excessive force cases are not in the same legal market as private plaintiff's attorneys who litigate civil rights cases," (*Ibid.*), it is difficult to imagine what lawyers, other than "private plaintiff's attorneys who litigate civil rights cases" fit into the "same legal market."

This Court has acknowledged that finding a prevailing market rate for hourly legal services is "inherently difficult" even when dealing with lawyers who actually charge hourly rates. (***Blum v. Stenson, supra*** at 465 U.S. 895 n.11, 104 S.Ct. 1547 n.11.) Such difficulty approaches incomprehensibility when it is applied to specialists who

represent civil rights plaintiffs exclusively and who perform few if any legal services for which they are paid an hourly fee by private clients. By narrowly defining the relevant market to include only plaintiff's civil rights lawyers, the courts utilizing this approach have created an entirely unrealistic and largely fictitious legal community.

In major urban markets, and Los Angeles in particular, there are large groups of lawyers who depend entirely on civil rights cases and ***Section 1988*** fee awards for their livelihood. They do not compete in the "real" marketplace. Many are sole practitioners or work in small, "boutique" law firms, and take only civil rights cases. When they request hourly rates of $350, $400 or $450, they submit affidavits from each other confirming that they are all experts and seasoned practitioners and have been awarded such fees by other judges in other civil rights cases. Or, like counsel in the instant case, they submit an affidavit from a large-firm partner practicing federal anti-trust litigation and billing $350-$550 an hour and insist that all their hours claimed should be compensated at the highest rate, ignoring the fact that clients in the real world only pay a name partner's elevated rates because they expect a partner's involvement in any given case to be limited. (***Finkelstein v. Bergna***, 804 F.Supp. 1235, 1237-1238 (N.D. Cal. 1992).)

Plaintiff's civil rights lawyers are not, in other words, representative of the larger legal community. Limiting the search for a prevailing market rate to hourly rates awarded to

such lawyers alone will not result in a realistic, or particularly rational, hourly rate. The search for a reasonable fee is thwarted, then, by a narrow definition of the prevailing market and leads to the kind of frustration eloquently expressed by the trial judge in this case. (***Trevino v. Gates***, 888 F.Supp. 1509, 1518-1519 (C.D. Cal. 1995).)

III.
THE RELEVANT MARKET SHOULD BE DEFINED BROADLY TO INCLUDE ALL LAWYERS PROVIDING SIMILAR SERVICES, INCLUDING DEFENSE LAWYERS.

Blum instructs that a reasonable hourly rate is to be determined by reference to rates "prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." (***Blum v. Stenson, supra*** at 465 U.S. 895 n.11, 104 S.Ct. 1547 n.11.) A broad interpretation of such language would allow for reference to a wide variety of evidence of rates charged by federal litigators, including hourly rates charged by lawyers representing governmental entities. Indeed, who better to compare a prevailing plaintiff's counsel to than opposing counsel who has a private practice and has been retained by a governmental entity to defend the lawsuit?

At least one circuit agrees that, at least in theory, there is

no reason why a plaintiff's lawyer should receive a higher hourly rate than that paid to counsel representing a defendant. In ***Andrade v. Jamestown Housing Authority, supra*** at 82 F.3d 1179, the First Circuit considered a prevailing attorney's complaint that the trial court had improperly reduced his requested hourly fee. (***Id.*** at 82 F.3d 1189-1190.) The rate requested by counsel was higher than that requested by other plaintiffs in the same case, however, and the circuit court concluded that the trial court had not erred in concluding that counsel had failed to provide adequate evidence supporting the higher rate. (***Id.*** at 82 F.3d 1190.) In the apparent absence of evidence indicating a need for a higher rate, the court concluded that there was no reason to ignore evidence of the rates paid defense counsel. (***Ibid.***)

Courts refusing to consider evidence of rates paid to defense counsel have not offered any theoretical rationale in support of its exclusion, but instead focus on factors which might justify only giving less weight to such evidence. The court in ***Malloy v. Monahan***, 73 F.3d 1012 (10th Cir. 1996) branded such evidence "markedly dissimilar," because defense lawyers are generally paid regardless of their success, they receive regular payment, and are sometimes guaranteed a certain amount of work from insurance pools. (***Id.*** at 73 F.3d 1018-1019.) Plaintiff's lawyers should be paid a higher rate, if this theory is accepted, in order to make up, and compensate them, for those cases they *lose*, a concept which should be

antithetical to the fee-shifting principles of ***Section 1988*** which afford fees only to a prevailing party.

Similarly, the court in ***Brooks v. Georgia State Bd. of Elections***, 997 F.2d 857 (11th Cir. 1993), which the Ninth Circuit followed in the case below, defense rates were deemed "irrelevant" since defense lawyers can charge lower rates because of counterbalancing benefits such as repeat business. (***Id.*** at 997 F.2d 869.) But courts faced with evidence that rates charged by a *plaintiff's* attorney seeking fees are artificially low because of the public interest nature of the work being performed have no difficulty adjusting the rates upward to result in an award in line with the prevailing market rate. (***Islamic Center of Mississippi, Inc. v. City of Starkville, supra*** at 876 F.2d 469; ***Student Public Interest Research Group, Inc. v. AT & T Bell Lab***, 842 F.2d 1436, 1438 (3rd Cir. 1988).) What is the difficulty, then, in permitting a district court to consider evidence of rates charged by lawyers representing governmental entities? If the rates charged are lower than the prevailing market rate because the attorney has negotiated a lower fee in order to obtain repeat business (a fact apparently not in evidence in any of the cases articulating this theory), then a district court is capable of affording the evidence the weight it is due and does not have to be prohibited from even considering it in order to calculate an appropriate hourly fee.

Moreover, the possibility of obtaining repeat business

hardly accounts for the disparity between the evidence of a $175 top hourly rate paid by the City to senior litigators retained to represent it or its employees and the $400 requested by plaintiff or the $550 claimed to be an appropriate hourly rate for top federal anti-trust litigators. In a market as competitive as Los Angeles, the top hourly rate paid to defense counsel representing the City is arguably much closer to the prevailing market rate among those lawyers who must actually make a living charging hourly rates. Only in the artificial and inflated market peopled exclusively by plaintiff's civil rights lawyers can an attorney expect to demand and be awarded a fee of $400 an hour for all work performed in a case, whether he or she is performing highly skilled tasks or simple tasks appropriate to a lower level associate.

Other than these objections, which really go only to the weight to be afforded evidence of hourly rates paid to defense attorneys not to admissibility, the courts have not articulated any justification for refusing to allow a district court to consider such evidence. The Ninth Circuit in this case similarly offered no rationale to support its conclusion that counsel practicing in the private sector who accept a governmental client somehow cease to be "private" lawyers and are no longer operating in the same legal market as private plaintiff's counsel. (Petition for Writ of Certiorari, Appendix at 27a-28a.) If the concepts of relevant market and prevailing market rate continue to be restricted and narrowed until they

ultimately only include plaintiff's civil rights attorneys, there will be no practical limit on the upward momentum of hourly fee requests in civil rights cases because the competing market forces that act on a lawyer's hourly rates can not operate in a vacuum. Evidence of rates paid to defense attorneys and rates charged by other lawyers not dependent on contingency awards is certainly relevant and should be admitted to allow a district court to fix an appropriate fee based on the facts and circumstances of individual cases.

IV.
CONCLUSION

The prevailing market rate should be determined by reference to a broad range of hourly rates paid to lawyers of similar skill performing "similar services" to those performed by plaintiff's civil rights lawyers. Restricting the admissible evidence of comparable hourly rates to only rates awarded to plaintiff's civil rights lawyers by other courts in other cases creates an "incestuous," non-competitive club with exclusive membership which is hardly representative of the greater legal community in which the attorney practices and the case is tried. District courts should be afforded broad discretion to review and consider evidence of many hourly rates and to afford such evidence the weight it is due given the individual circumstances of each case. Given that governmental entities

are probably the largest single consumer of hourly legal services in the civil rights litigation field today, it simply makes no sense to bar trial courts from considering the hourly rates paid to such lawyers when attempting to determine an appropriate hourly rate to be paid to plaintiff's counsel.

For the foregoing reasons it is respectfully requested that this Court grant this Cross-Petition for a writ of certiorari and set aside that portion of the decision of the United States Court of Appeals for the Ninth Circuit limiting the evidence which may be considered by a district court in calculating a reasonable hourly rate to be awarded plaintiff's counsel in a civil rights case.

DATED: January 29, 1997

Respectfully submitted,

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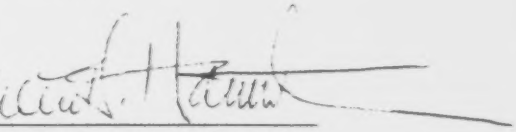
By 
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